UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANIEL BLACK,

Plaintiff,

v. Case No. 2:17-cv-00156

DAVID CLARKE,

And

COUNTY OF MILWAUKEE, WISCONSIN,

Defendants.

BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO SEAL DKT. #21 BY PLAINTIFF DANIEL BLACK

Before

The Honorable J.P. Stadtmueller
U.S. District Court Judge

For the Plaintiff

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Date: September 13, 2017.

COMES NOW Plaintiff Daniel Black ("Black"), by his attorney William F. Sulton, Esq., of the law firm of Peterson, Johnson & Murray, S.C., and submits this brief in opposition to defendants' motion to seal Dkt. #21.

The law requires that the party requesting protection "analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations." *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 548 (7th Cir. 2002); *Composite Marine Propellers, Inc. v. Van Der Woude,* 962 F.2d 1263, 1266 (7th Cir. 1992) (a litigant must do more than just identify a kind of information and demand secrecy). Defendants' motion is so perfunctory that the court should summarily reject it.

The motion states that the Office of the Milwaukee County Sheriff has created a matrix of threats made against former Milwaukee County Sheriff David Clarke ("Sheriff Clarke") and the matrix should be excluded from public view because: (1) some investigations "may be ongoing"; (2) disclosure may provide assistance to "hostile" individuals; and (3) the supposed "hostile" individuals "may [be] damage[d]" or "expose[d] [] to unwanted attention." (Dkt. #20 at 1.) Defendants offer no legal analysis or evidentiary support for their assertions.

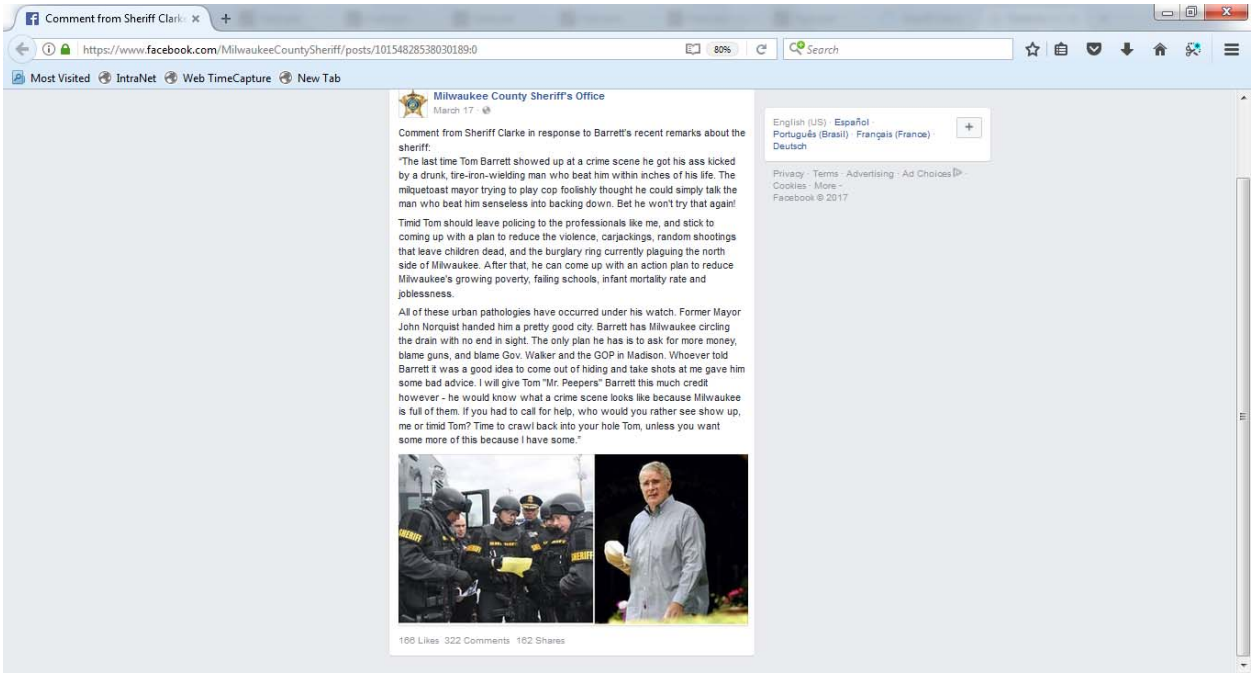
The "direct threat" column shows that none of the statements were direct threats—according to the sheriff's office's own assessment. The "media type" column shows that the statements were made using social media posts (e.g., Facebook, Instagram), emails to the sheriff's office and telephone calls to the

sheriff's office. Given that, the supposed hostile individuals do not have any expectation of privacy. And none of the statements are true threats.

Consider the following examples from the matrix:

- September 6, 2016 entry. "wow. Surreal. This is the first time this coon has shunned the spotlight." (Dkt. #21 at 2.)
- March 15, 2017 entry. "Stay out of Chicago you lousy UNCLE TOM!" (*Id.* at 3.)
- May 20, 2017 entry. "Looks like you got caught for plagiarism you hypocritical low-class piece of crap!" (*Id.* at 4.)
- June 18, 2017 entry. ". . . a reporter for the Washington Post posted the acceptance letter from the Department of Homeland Security and included Sheriff Clarke's home address. A . . . responded by posting "Cool! Can we pee on his lawn?" (*Id.* at 5.)
- July 26, 2017 entry. "coon ass bitch, all he does is kiss white peoples asses, he can such my dick." (*Id.* at 6.)

Now consider a post from Sheriff Clarke to City of Milwaukee Mayor Tom Barrett, "time to crawl back into your hole Tom, unless you want some more of this because I have some":



Milwaukee County Sheriff Office's Facebook Page. March 17, 2017. (available at https://www.facebook.com/MilwaukeeCountySheriff/posts/10154828538030189:0 (visited Sep. 13, 2017)).

The much larger question we all should have is: why was Dkt. #21 even filed? Frankly, plaintiff's counsel has not considered defendants' motion for summary judgment. Plaintiff's counsel is addressing defendants' motion to seal now only because defense counsel asked him to review it immediately. But the law is clear that individual suspicion is necessary for a *Terry* stop. That others may have made threats at different times, at different places, is irrelevant. *United States v. Bohman*, 683 F.3d 861, 864 (7th Cir. 2012) ("mere suspicion of illegal activity at a particular place is not enough to transfer that suspicion to anyone who leaves [or arrives at] that property" and thus "is not enough to justify stopping everyone emerging from [or arriving at] that property."); *Matz v. Klotka*, 769 F.3d 517 (7th Cir., 2014) ("simply being in the presence of others who are themselves suspected of criminal activity is insufficient standing alone to establish particularized suspicion for a *Terry* stop and frisk.").

For the above reasons, defendants' motion to seal Dkt. #21 should be denied.

Dated at the law offices of Peterson, Johnson & Murray, S.C., in Milwaukee, Wisconsin, on this 13th day of September, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 13, 2017, I served a true and correct copy of the above *Brief in Opposition to Defendants' Motion to Seal Dkt. #21*, via the Court's CM/ECF system, to the below counsel of record for defendants.

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